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THE GEO GROUP, INC., CITY OF ADELANTO,
CAMPOS, and DIAZ

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

OMAR ARNOLDO RIVERA
MARTINEZ; ISAAC ANTONIO
LOPEZ CASTILLO; JOSUE
VLADIMIR CORTEZ DIAZ; JOSUE
MATEO LEMUS CAMPOS;
MARVIN JOSUE GRANDE
RODRIGUEZ; ALEXANDER
ANTONIO BURGOS MEJIA; LUIS
PENIA GARCIA; JULIO CESAR
BARAHONA CORNEJO, as
individuals,

Plaintiffs,

v.

THE GEO GROUP, Inc., a Florida
corporation; the CITY OF
ADELANTO, a municipal entity; GEO
LIEUTENANT DIAZ, sued in her
individual capacity; GEO
SERGEANT CAMPOS, sued in his
individual capacity; SARAH JONES,
sued in her individual capacity; THE
UNITED STATES OF AMERICA;
CORRECT CARE SOLUTIONS,
INC.; and DOES 1-10, individuals,

Defendants.

Case No. 5:18-cv-01125-SP

**DEFENDANTS' NOTICE OF
MOTION AND MOTION IN
LIMINE NO. 1 TO EXCLUDE
EVIDENCE OF ALLEGED OTHER
BAD ACTS OF DEFENDANTS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

*[Declaration of Carmen M. Aguado and
[Proposed] Order filed concurrently
Herewith]*

Pretrial Conference: January 21, 2020
Time: 10:00 a.m.
Courtroom: 3
Judge: Hon. Sheri Pym

1 TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT on January 21, 2020 at 10:00 a.m., or as
3 soon thereafter as this matter may be heard in Courtroom 3 of the above-captioned
4 Court, located at 3470 12th St., 3rd Floor, Riverside California, 92501. Defendants
5 THE GEO GROUP, INC. ("GEO"), CITY OF ADELANTO ("City"), CAMPOS,
6 and DIAZ will move this Court for an Order excluding Plaintiffs from introducing
7 evidence or arguments of any alleged other bad acts of Defendants, including but
8 not limited to:

9 (1) protests that stem from the belief that immigrant detainees are mistreated
10 at the Facility;

11 (2) complaints and/or lawsuits made against Defendants related to other
12 incidents, including adverse actions within GEO employees' personnel files; and

13 (3) investigations or matters regarding/related to other incidents of alleged
14 mistreatment of immigrant detainees that purport to document rule violations or
15 sanctions against Defendants, including but not limited to (i) the September 27,
16 2018, "Management Alert – Issues Requiring Action at the Adelanto ICE
17 Processing Center in Adelanto, California" prepared by the Office of Inspector
18 General; and (ii) internal investigations/reports completed by GEO related to their
19 former and current employees failing to comply with policies and procedures
20 during unrelated incidents that are within GEO's employees' personnel files.

21 The Motion is based upon the Notice of Motion, the attached Memorandum
22 of Points and Authorities, the pleadings, records and files in this action, and such
23 other matters as may properly come before the Court.

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26 ///

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1 This motion is made following an attempt to meet and confer with Plaintiffs'
2 counsel pursuant to Local Rule 7-3. *See* Decl. of Carmen M. Aguado ("Aguado
3 Decl.") at ¶ 9.

4
5 Dated: December 31, 2019

BURKE, WILLIAMS & SORESENSEN, LLP

6
7 By: /s/ Carmen M. Aguado

8 Susan E. Coleman
Carmen M. Aguado

9 Attorneys for Defendants
10 THE GEO GROUP, INC., CITY OF
11 ADELANTO, CAMPOS, and DIAZ
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

Plaintiffs are eight (8) civil detainees that were detained at the Adelanto ICE Processing Detention Facility (“Facility”) in June 2017.¹ On June 12, 2017, Plaintiffs engaged in what they allege was the start of a hunger strike (however, it is unclear whether any GEO personnel understood their intent) in the dayroom of their dorm. Plaintiffs chose to participate in the strike during a critical period of time at the Facility that required all detainees to be at their bunks (count). If count is not completed within a specified time period, the entire Facility is placed in an emergency state. Despite numerous commands to return to their bunks, and warnings that OC spray may be used to compel their compliance, Plaintiffs refused to listen and instead remained in the dayroom to bring attention to their grievances. Their noncompliance not only caused a major disruption in the dorm, but it threatened to disrupt the entire Facility as they were delaying count. As a result of their noncompliance, and the major disturbance that resulted from their conduct, Defendants Lt. Diaz and Sgt. Campos (“Defendants”), former employees of Defendant GEO, deployed short bursts of OC spray (3 in total).

Through this Motion in Limine No. 1, Defendants move to exclude Plaintiffs from introducing any evidence or arguments of alleged other “bad acts” of Defendants. This includes, but is not limited to the following:

- (1) protests that stem from the belief that immigrant detainees are mistreated at the Facility;
- (2) complaints and/or lawsuits made against Defendants related to other incidents, including adverse actions within GEO employees’ personnel files; and
- (3) investigations or matters regarding/related to other incidents of alleged

¹ In May 2011, GEO entered into contract with U.S. Immigration & Customs Enforcement (ICE) for the detention and care of immigrant detainees at the Facility, which houses immigrant detainees through an intergovernmental service agreement with the City of Adelanto, which owns the property.

1 mistreatment of immigrant detainees that purport to document rule violations or
 2 sanctions against Defendants, including but not limited to (a) the September 27,
 3 2018, “Management Alert – Issues Requiring Action at the Adelanto ICE
 4 Processing Center in Adelanto, California” prepared by the Office of Inspector
 5 General (“OIG”)²; and (b) internal investigations/reports completed by GEO related
 6 to their former and current employees failing to comply with policies and
 7 procedures during unrelated incidents that are within GEO’s employees’ personnel
 8 files.

9 Defendants anticipate Plaintiffs will attempt to introduce the aforementioned
 10 “evidence” in an effort to prove liability. However, such evidence is irrelevant and
 11 unduly prejudicial in relation to its probative value, would create an undue
 12 consumption of time, and is inadmissible under Federal Rules of Evidence
 13 404(b)(1). Additionally, much of this evidence is inadmissible hearsay, or contains
 14 multiple layers of hearsay not subject to any exceptions. Fed. R. Evid. 402-403.

15 **II. STANDARD FOR MOTIONS IN LIMINE.**

16 A motion in limine is a procedural device to obtain an early and preliminary
 17 ruling on the admissibility of evidence. *Goodman v. Las Vegas Metro. Police Dep’t*,
 18 963 F. Supp. 2d 1036, 1046-47 (D. Nev. 2013). Although the Federal Rules of
 19 Evidence do not explicitly authorize a motion in limine, the Supreme Court has
 20 held that trial judges are authorized to rule on motions in limine pursuant to their
 21 authority to manage trials. *Luce v. United States*, 469 U.S. 38, 41 n. 4, 105 S.Ct.
 22 460, 83 L.Ed.2d 443 (1984). A motion in limine is a request for the court’s
 23 guidance concerning an evidentiary question. *See Wilson v. Williams*, 182 F.3d 562,
 24 570 (7th Cir. 1999).

25
 26
 27 ² Defendants are willing to exclude from the evidence any conclusions reached by
 28 the Nakatomo Group related to the June 12, 2017 incident in this case (the basis of
 Plaintiffs’ motion in limine no. 3) if Plaintiffs agree to exclude the 2018 OIG report.

1 **III. ANY EVIDENCE OR ARGUMENT OF ALLEGED OTHER BAD**
 2 **ACTS OF DEFENDANTS SHOULD BE EXCLUDED.**

3 Plaintiffs allege the force used by Defendants Campos and Diaz violated
 4 their state and federal law rights, Defendants GEO and the City failed to train GEO
 5 employees and maintained unconstitutional policies and procedures (thus GEO and
 6 the City are subject to *Monell* liability),³ and Defendants GEO and the City are
 7 vicariously liable for the conduct of GEO's employees related to the incident.

8 To support their claims, Plaintiffs produced in discovery a September 27,
 9 2018, "Management Alert – Issues Requiring Action at the Adelanto ICE
 10 Processing Center in Adelanto, California" prepared by the OIG wherein the OIG
 11 identified issues (none of which relate to the use of force at the Facility or the
 12 incident at issue in this case) during an inspection that took place 11 months after
 13 the incident at issue. Similarly, throughout discovery, Plaintiffs' counsel referenced
 14 protests at the Facility to somehow demonstrate liability and sought the personnel
 15 files of GEO employees that were present at the time of the incident. Aguado Decl.
 16 at ¶¶ 4, 5, Ex. "B" [Diaz Dep.], Ex. "C" [Janecka Dep.].

17 As demonstrated below, (1) protests that stem from the belief that immigrant
 18 detainees are mistreated at the Facility; (2) complaints and/or lawsuits made against
 19 Defendants related to other incidents, including complaints within GEO employees'
 20 personnel files; and (3) investigations or matters regarding/related to other incidents
 21 of alleged mistreatment of immigrant detainees that purport to document rule
 22 violations or sanctions against Defendants, including but not limited to the 2018
 23

24 ³ If the Court partially grants Defendants GEO and the City's motion for summary
 25 judgment ("MSJ"), and determines that Section 1983 claims cannot be brought
 26 against any Defendant in this matter or, alternately, determines that Section 1983
 27 claims are viable but Plaintiffs have nevertheless failed to establish their *Monell*
 28 claims against GEO or the City, then the only remaining claims against Defendants
 will be Plaintiffs' state law claims that relate to the incident itself. To the extent that
 Plaintiffs remaining claims are solely related to the incident itself, evidence of other
 bad acts unrelated to the incident are clearly barred by Rules 402 and 404(b)(1) of
 the Federal Rules of Evidence.

OIG and internal investigations/reports completed by GEO related to their former and current employees failing to comply with policies and procedures during unrelated incidents, should be excluded.

A. EVIDENCE OF PROTESTS, COMPLAINTS, LAWSUITS, OR INVESTIGATIONS MADE IN RELATION TO OR AGAINST DEFENDANTS REGARDING OTHER INCIDENTS IS IRRELEVANT.

Federal Rule of Evidence 401 defines “relevant evidence” as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 402 provides that “all relevant evidence admissible.” Furthermore, Rule 403 provides in pertinent part: “Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or a needless presentation of cumulative evidence.”

“Unfair” in this context means the evidence has an undue tendency to suggest a jury decision based upon an improper basis, typically based upon emotion. *U.S. v. Young*, 754 F.Supp. 739, 742 (D.S.D. 1990). Additionally, where evidence is not closely related to the issue being charged and is otherwise irrelevant, the probative value of such evidence is substantially outweighed by the significant danger of unfair prejudice. *United States v. Guerrero*, 756 F.2d 1342, 1348 (9th Cir. 1984); *U.S. v. Black*, 20 F.3d 1458, 1464 (9th Cir. 1994).

The admission into evidence or permitting Plaintiffs’ counsel, Plaintiffs or any of Plaintiffs’ witnesses to refer to any allegations of misconduct as evidenced in or by protests, complaints, lawsuits, or investigations demonstrating rule violations or sanctions on the part of the City, GEO, and GEO’s former or current employees outside of the incident giving rise to this litigation would violate a long-standing-

1 principle embraced in both state and federal law; a person or entity accused of a
2 particular act — criminally or civilly — should not be judged on the basis of other
3 acts or incidents. Such evidence is undisputedly inflammatory and prejudicial,
4 while providing little, if any, probative value.

5 More specifically, Defendants seek to exclude the 2018 OIG report, which
6 was produced in discovery, and that relates to three issues that were identified at the
7 Facility *11 months* after the incident. The issues that were identified in the 2018
8 OIG report do not relate any of the claims in this case – *e.g.*, the use of force at the
9 Facility, improper training and supervision of GEO employees related to use of
10 force incidents, or unconstitutional policies. The 2018 OIG investigation and
11 subsequent report relate to the three issues that were identified nearly a year after
12 the incident and are unrelated to the crux of this litigation: the use of force. Aguado
13 Decl.at ¶ 3, Ex. “A” [2018 OIG Report]. As such, reference to the 2018 OIG
14 investigation/report is inadmissible as it is irrelevant and, even if it was relevant, its
15 probative value is substantially outweighed by the danger of unfair prejudice,
16 confusion of the issues, or misleading the jury. *See* Fed. R. Evid. 402, 403. Also,
17 given the issues identified in the 2018 OIG investigation/report are irrelevant to the
18 claims of this case, requiring witnesses to testify regarding the 2018 OIG
19 investigation/report would waste time and amount to a needless presentation of
20 evidence. *See* Fed. R. Evid. 402, 403.

21 Consequently, any mention of unrelated incidents referenced within
22 complaints, lawsuits, or investigations demonstrating rule violations or sanctions
23 would unfairly prejudice Defendants as it would only serve to inflame the passions
24 and prejudices of the jury. Permitting Plaintiffs to raise the specter of such high-
25 profile and potentially polarizing events would also mislead the jury into thinking
26 that they should, for some unrelated reason, take these other incidents into account
27 when evaluating whether Defendants’ conduct was lawful in this incident. For these
28 reasons, the evidence should be excluded.

1 **B. EVIDENCE OF PROTESTS, COMPLAINTS, LAWSUITS, OR**
 2 **INVESTIGATIONS MADE IN RELATION TO OR AGAINST**
 3 **DEFENDANTS REGARDING OTHER INCIDENTS IS**
 4 **IMPROPER CHARACTER EVIDENCE.**

5 Federal Rule of Evidence 404(b) provides that evidence of prior acts is not
 6 admissible to show conduct in conformity with those acts. Ninth Circuit case law is
 7 clear, holding that “Character evidence is normally not admissible in a civil rights
 8 case.” *Cohn v. Papke*, 655 F.2d 191, 193 (9th Cir. 1981).

9 As confirmed within *Gates v. Rivera*, 993 F.2d 697 (9th Cir. 1993), an
 10 officer’s prior conduct is inadmissible. In *Gates*, Plaintiff Allene Gates (Gates)
 11 brought a civil rights action under 42 U.S.C. § 1983 against John Rivera (Rivera), a
 12 Santa Ana police officer, related to interactions with her son, Marvin McGensey.
 13 *Id.* at 698. Rivera, off duty at the time and while house-hunting with his wife, saw a
 14 man, later identified as McGensey, jump over a wall protecting a condominium
 15 complex. *Id.* After witnessing further suspicious behavior, Rivera proceeded to
 16 investigate which ultimately escalated to an officer-involved-shooting. *Id.* 698-99.

17 During the trial and over Gates’ objections on relevancy grounds, Rivera was
 18 permitted to testify that in his sixteen and one-half years as a police officer, he had
 19 not shot anyone, leading to the jury returning a defense verdict. Gates appealed and
 20 argued that Plaintiffs case was prejudiced as a result of such testimony. The court
 21 concluded that character evidence via prior complaints against a police officer is
 22 not admissible nor relevant to a civil rights case, stating as follows:

23 “Gates’ objections [to testimony and argument about past
 24 conduct] should have been sustained. Fed.R.Evid. 404.
 25 Character evidence is normally not admissible in a civil
 26 rights case. *Cohn v. Papke*, 655 F.2d 191, 193 (9th Cir.
 27 1981). . . . The question to be resolved was whether,
 28 objectively, his use of force had been excessive. *Graham*
 v. Connor, 490 U.S. 386, 395, 109 S.Ct. 1865, 1871, 104
 L.Ed.2d 443 (1989). His past conduct did not bear on that
 issue.”

///

1 Other federal courts have reached similar conclusions, such as the following:

- 2 • Permitting a jury to hear complaints from an officer's personnel file presents
3 a grave danger of unfair prejudice. *Carter v. District of Columbia*, 795 F.2d
4 116, 131 (D.C.Cir. 1986); *see also Brooks v. Haggett*, 2010 WL 4226693
5 (N.D. Cal., Oct. 21, 2010, C 07-2615 MEJ).
- 6 • Past complaints of an officer's conduct involving different actors, facts, and
7 circumstances are irrelevant to determine whether the force used in the
8 instant case is objectively reasonable under the totality of the circumstances.
9 *Brooks v. Haggett*, 2010 WL 4226693 * 2 (supra) ("Here, it is clear that any
10 complaints, allegations, or investigations regarding Defendant's previous
11 conduct are inadmissible not only because such evidence would be unduly
12 prejudicial, but also because such evidence is irrelevant."); *see also Tan v.*
13 *City & County of San Francisco*, C 08-1564 MEJ, 2010 WL 726985, at *2-3
14 (N.D.Cal.2010) (excluding evidence and argument related to complaints,
15 investigations, or allegations of misconduct against the defendant officers,
16 except if used solely for purposes of impeachment).

17 Similar to *Gates*, complaints, lawsuits, or investigations (including
18 complaints, investigations, and adverse actions found within the personnel files of
19 GEO's employees that were produced pursuant to this Court's order as described in
20 detail below) that relate to other incidents involving Defendants and/or former and
21 current employees of GEO are irrelevant. Since the central question is whether the
22 conduct in the instant case was objectively reasonable and lawful, the question of
23 whether Defendants or GEO's former and/or current employees allegedly
24 committed other acts in unrelated matters is inconsequential and has no bearing on
25 the seminal question. Almost certainly, such evidence would result in prejudice,
26 confusion of the jury, and an undue waste of time, necessarily resulting in a mini-
27 trial wherein the facts, circumstances, legal issues and outcome of each complaint,
28 investigation, and any subsequent report would have to be addressed. Therefore,

1 any argument, testimony and/or evidence about unrelated complaints or other
 2 incidents must be excluded under Rules 401, 402 and 403 as irrelevant, unduly
 3 prejudicial, likely to confuse the jury and resulting in an undue waste of time.

4 Finally, regardless of the probative value of any potential complaints against
 5 Defendants and GEO's former and current employees, if any, the use of character
 6 evidence is also clearly outweighed by the danger of undue prejudice. "[P]ermitting
 7 the jury to consider the complaints and accounts of misconduct contained in the
 8 personnel files of-the defendant officers] present[s] a grave danger of unfair
 9 prejudice." *Carter*, at 131. The unfair prejudice results from the likelihood that the
 10 jury "would conclude that the evidence established the bad character of the
 11 defendants and that the defendants were likely to have acted in the same way on the
 12 night in question." *Id.*; see also *Tan*, WL 726985, at *2.

13 **C. COMPLAINTS, REPORTS, AND INVESTIGATIONS WITHIN**
 14 **THE PERSONNEL FILES OF GEO'S EMPLOYEES RELATED**
 15 **TO OTHER INCIDENTS ARE PROPERLY EXCLUDED.**

16 Defendants were ordered to provide Plaintiffs with complaints and
 17 investigations that resulted in discipline and were within the personnel files of GEO
 18 employees Diaz, Alvaro Lanuza, Anthony Reyes, Frankie Juarez, Gilbert Martinez,
 19 and Rodrick Gillon. At trial, Defendants anticipate that Plaintiffs will seek to
 20 introduce or use for impeachment documents from the aforementioned employees'
 21 personnel files that are related to other incidents. In particular, Defendants
 22 anticipate Plaintiffs will rely on the following:

- 23 • The April 2019 complaint/investigation related to Diaz's attempt to use
 24 chemical agents on a detainee in violation of GEO policy that ultimately led
 25 to her termination from GEO. In the process of investigating the April 2019
 26 incident, GEO personnel found that Diaz obstructed the investigation by not
 27 providing complete information to the investigator, which was documented
 28 within the complaint/investigation. The complete investigation includes

1 documentation related to disciplinary action taken against Diaz, multiple
 2 memorandums confirming the investigation, and documentation of her
 3 termination.

- 4 • The February 2018 complaint/investigation related to Reyes wherein a
 5 detainee alleged he was verbally abused by Reyes. The complete
 6 investigation includes documentation related to disciplinary action taken
 7 against Reyes, grievances filed by detainees, multiple memorandums
 8 confirming the investigation, and documentation of his termination.

9 Aguado Decl. at ¶¶ 6-8.

10 As demonstrated above, permitting a jury to hear complaints, investigations,
 11 or disciplinary reports from an officer's personnel file presents a grave danger of
 12 unfair prejudice. Moreover, as discussed above, complaints, investigations, or
 13 disciplinary reports are improper character evidence, have no probative value, and
 14 are irrelevant to determine any of the critical issues in this case. For these reasons,
 15 all documents within the personnel files should be excluded and Plaintiffs should be
 16 precluded from providing any testimony related to said files.

17 With respect to the complaints/investigations that led to the terminations of
 18 Diaz and Reyes, these complaints were well after the subject incident and irrelevant
 19 to determine whether the force used in the instant case is objectively reasonable
 20 under the totality of the circumstances. Thus, any evidence related to these
 21 complaints and investigations (including the outcome – termination) is properly
 22 excluded as unduly prejudicial, minimally relevant, and confusing.

23 **IV. CONCLUSION.**

24 For the foregoing reasons, Defendants respectfully requests that this Court
 25 grant Defendants' Motion in Limine No. 1 to exclude evidence or arguments of any
 26 alleged other bad acts of Defendants, including but not limited to:

27 (1) protests that stem from the belief that immigrant detainees are mistreated
 28 at the Facility;

1 (2) complaints and/or lawsuits made against Defendants related to other
2 incidents, including adverse actions and complaints within GEO employees'
3 personnel files; and

4 (3) investigations or matters regarding/related to other incidents of alleged
5 mistreatment of immigrant detainees that purport to document rule violations or
6 sanctions against Defendants, including but not limited to (a) the 2018 report
7 prepared by OIG and (b) internal investigations/reports completed by GEO related
8 to their former and current employees failing to comply with policies and
9 procedures during unrelated incidents that are within GEO's employees' personnel
10 files.

11
12 Dated: December 31, 2019

BURKE, WILLIAMS & SORENSEN, LLP

13
14 By: /s/ Carmen M. Aguado
15 Susan E. Coleman
Carmen M. Aguado

16 Attorneys for Defendants
17 THE GEO GROUP, INC., CITY OF
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